and to prevent a party suing from succeeding if part of his obligations are illegal when he must perform precedently. But in the principal case the obligation is at most in part valueless, and by the rules above considered partial worthlessness is immaterial. *Bishop* v. *Palmer*, 146 Mass. 469. However, in the principal case the plaintiff's promise seems not conditional but independent, and, if so, its unenforceability, even if it amounted to illegality, would not vitiate the contract or invalidate the defendant's obligation. *Tishell* v. *Gray*, 31 Vroom, 5.

To consider the final ground relied upon by the court: When a promise is unenforceable by the Statute of Frauds does failure of consideration result? A void promise would cause failure of consideration, but this promise is voidable only; the court is in error when it considers it essential to the liability of the party sought to be charged that there be mutuality of obligation. *Justice* v. *Lang*, 42 N. Y. 493. Consideration alone is requisite, and by the rules above discussed valid consideration is seen to exist in the present case. It seems, then, impossible to support the decision reached.

VENUE AND JURISDICTION IN LARCENY. — It is everywhere the law that, where a thief steals property in one county and is found in another with the goods in his possession, he may be indicted in either, but not in both. *State* v. *Williams*, 47 S. W. Rep. 891 (Mo.), is no exception to this rule. The defendant stole a steer in Texas County and brought it with him into Pulaski County, where he was indicted for larceny. The court held that the venue was properly laid in Pulaski County on the ground that each transportation of the stolen property by the thief was a new caption. Though the reasoning of the court is questionable, it reaches a sound result. In different counties there is the same law and the same punishment. There is but one offence against a single sovereignty. Venue being a merely formal matter, a thief may be indicted for convenience sake in any county which he enters with the stolen property without prejudice to himself. The decision in the present case, then, may well have been reached without recourse to the fiction of continuing trespass, even if such a doctrine is sound.

The principle of continuing larceny is truly tested when the thief is indicted in a jurisdiction into which he has carried goods stolen in another. The English courts have always disclaimed jurisdiction when the original taking was in another sovereignty. *Regina* v. *Carr*, 15 Cox C. C. 131 *n*. In the United States the authorites are divided. *Commonwealth* v. *Holder*, 9 Gray, 7, proceeding on the analogy of the rule adopted where property is stolen and carried from county to county, decides that the thief may be indicted in whatever State he enters with the goods. *Lee* v. *State*, 64 Ga. 203, declares, on the other hand, that there is but one offence which exists only at the place where the original trespass occurred. Larceny is the taking and carrying away of the personal property of another *animo furandi*. The act of taking is the essence of the crime. It is evident that, after possession is once complete and continuous in the thief, no subsequent act of his can constitute a new caption from the custody of the true owner. Yet the doctrine of *Commonwealth* v. *Holder* and kindred cases can rest on no other principle than that every act of possession by the defendant, subsequent to the original change of custody, is

a new trespass on the actual possession of the true owner — which *ex hypothesi* has terminated. The analogy drawn from decisions like the principal case where the goods are carried from county to county is a mistaken one. There the thief can be punished but once. It is really a rule of convenience. If the palpable fiction of continuing trespass be adopted to its full extent, and the defendant make a tour with the stolen property through every State in the Union, there is nothing but death to prevent his retracing his steps in a series of imprisonments.

THE DEFENCES OF A SURETY. — If a creditor gives the principal debtor time for payment the surety is injured because he is deprived of his undoubted right to pay the debt at maturity, and at once sue the principal in the creditor's name. The occasions when this injury will constitute a defence to a suit by the creditor have caused much discussion. In the recent case of *Grier* v. *Flitcraft*, 41 Atl. Rep. 425 (N. J. Ch.), a surety and his principal had signed a note as joint and several makers. The note itself did not disclose that the relation of suretyship existed, but the payee took the note with notice that this relation did exist. The surety filed a bill to have the collection of the note enjoined because the payee had given time to the principal debtor. The payee claimed that this action could be pleaded as a defence to a suit at law, and that therefore equity had no jurisdiction. The court held they had jurisdiction, reasoning substantially as follows: The creditor took the note with notice that the complainant was only a surety. By so taking it he impliedly agreed to respect the complainant's rights as surety, and contracted not to impair his remedies against the principal. Unless, then, the face of the note disclosed the fact that the relation of suretyship existed, this contract could not be proved at law, for the terms of a specialty cannot be altered by parol. Accordingly it was proper for the surety to seek the aid of equity.

It may be true that equity has a concurrent jurisdiction in cases of this kind, but the position that breach of contract is the basis of the defence, and that it is available at law, only when the suretyship is mentioned in the note seems questionable. Though this position is approved by the courts of Maryland it is disapproved by almost all other jurisdictions. The courts of equity were the first to hold that time given was a defence, and at the start the decisions were based not on the ground that there had been a breach of implied contract, but on the principle that the payee's sole claim was to be paid fully, and that it would be unjust to allow him knowingly to prejudice the surety's remedies against the principal and afterwards also to collect the entire claim. *Nisbet* v. *Smith*, 2 Bro. C. C. 579 (1789). In 1800 the courts of law began to allow this defence. The subsequent party to a bill was held discharged when time was given a prior party. *English* v. *Darley*, 2 Bos. & Pul. 61. These early cases at law were also decided on strictly equitable grounds and without mentioning implied contract. *Gould* v. *Robson*, 8 East, 576 (1807). In 1817 Lord Eldon said that the same principles which discharge the surety in equity now discharge him at law. *Samuell* v. *Howarth*, 3 Mer. 272. In spite of this start, the courts of law during the next forty years in their desire to be governed by legal, not equitable reasoning, laid hold of certain suggestions in *Rees* v. *Berrington*, 2 Ves. Jr. 540 (1795), and finally